

Dated 20th February 2023

THE ROCHDALE BOROUGH COUNCIL

and

Recedham Developments Limited

A G R E E M E N T

Pursuant to Section 106 of the Town & Country
Planning Act 1990 in respect of

LINDA FISHER
Service Director
Legal and Democratic Services
Town Hall
Rochdale
OL16 1AB

AN AGREEMENT by way of Deed made the 20th day of February 2023

BETWEEN

- (1) **THE ROCHDALE BOROUGH COUNCIL** of Town Hall Rochdale Greater Manchester OL16 1AB ("**the Council**")
- (2) **Rochdale Borough Council** [Details] ("**the Owner**")
- (3) **Recedham Developments Limited** [Details] ("**the Developer**")

WHEREAS:

- (1) The Council is the Local Planning Authority for the purpose of the Town and Country Planning Act 1990 ("**the 1990 Act**") for the area in which the land (hereinafter referred to as "**the Site**") described in the Schedule hereto is situate and by whom the Planning Obligations contained in this Deed are enforceable
- (2) The Owner is the owner of the Brassey Street estate in the Site legal title to which is registered under Title Numbers
- (3) The Developer [recite developer's interest]
- (4) The Mortgagee has the benefit of a charge dated N/A in respect of the Site
- (5) The Owner/Developer has submitted the Application to the Council for and intends to carry out the Development in accordance with the Permission
- (6) The Council is concerned to ensure that any development of the Site is carried out in such a way as to ensure that appropriate provision will be made in accordance with the Council's policies in relation to the provision and future maintenance of public sports provision outside the site and within the Council's area
- (7) The parties hereto agree that it is necessary to make the Development acceptable in planning terms that this Deed be entered into and that the use of the said land should be restricted as hereinafter appearing and that the securing of such provision as is mentioned above by way of the payments to be made to the Council and other matters set out in

this Deed as hereinafter appearing are directly related to and fairly and reasonably related in scale and kind to the Development

NOW THIS DEED WITNESSETH as follows:-

1. Definitions and Construction of this Deed

- 1.1 In this Deed unless the context otherwise requires the following words and expressions and phrases shall have the meanings hereby ascribed to them:

"the Act"	Means the Town and Country Planning Act 1990 as amended
"Application"	Means the application for Planning Permission for residential development on the Site and given reference number 22/01440/FUL by the Council
"Commencement of the Development"	Means the commencement of the Development by the carrying out on the Site in accordance with the Planning Permission of a material operation as specified in Section 56(4) of the Act (but not including any operations relating to site investigations safety security or surveys or the demolition of any existing buildings or clearance of or removal of contamination from the Site) and the phrase "commence the Development" shall be construed in like manner

"Council"	Means the Council of the Metropolitan Borough of Rochdale
"Development"	Means development pursuant to the Permission
"Permission"	Means the written planning permission to be granted pursuant to the Application
"Site"	Means the land in respect of which the Application has been made and which is described in Schedule 1 and shown edged red on the plan attached to this Agreement
"Sports Contribution"	Means the contribution of £ to be paid to the Council pursuant to the terms of this Agreement and used for the purposes set out herein
"Working Day"	Means any day from Monday to Friday inclusive which is not a Bank or Public Holiday

1.2 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed

1.3 The clause paragraph and schedule headings do not form part of this Deed and shall not be taken into account in its construction or interpretation

- 1.4 Words importing the singular meaning where the context so admits includes the plural meaning and vice versa
- 1.5 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner
- 1.6 Wherever there is more than one person named as a party and where more than one party undertakes an obligation, all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise
- 1.7 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it
- 1.8 Reference to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council the successors to its respective statutory functions
- 1.9 An obligation to do something includes an obligation to procure it to be done and an obligation not to do something includes an obligation not to allow it to be done
- 2.** **THIS** Agreement which contains Planning Obligations for the purposes of Section 106 of the Act and is made pursuant to the said Section 106 with the intent that the covenants hereinafter contained shall be enforceable by the Council acting under the powers contained in Section 106 aforesaid or otherwise against the Owner and all persons deriving title from the Owner

3. INSOFAR as any of the covenants contained in the Agreement are not planning obligations within the meaning of Section 106 of the Act they are entered into pursuant to the powers contained in Section 111 of the Local Government Act 1972 and all other enabling powers

4. THE parties to this Agreement agree that this Agreement may be rescinded or varied without the consent of any third party whose consent would otherwise be required pursuant to the Contracts (Right of Third Parties) Act 1999 ("**the 1999 Act**") and that nothing in this Agreement will create any rights in favour of any person pursuant to the 1999 Act.

5. EXCEPT as otherwise mentioned this Agreement shall take effect on the date of completion hereof.

6. IN consideration of these presents the Owner hereby enters into this Planning Obligation and covenants with the Council as follows:-

- 6.1 Not to commence the Development until the Sports Contribution increased with inflation in accordance with Clause 11 has been paid to the Council
- 6.2 To give to the Council not less than five Working Days' notice in writing of the intended date of Commencement of the Development and upon giving such notice to pay to the Council the Sports Contribution increased with inflation in accordance with Clause 11
- 6.3 To pay to the Council interest at the rate of 4% above the base rate of the Bank of England on any sum due under this Agreement which remains unpaid for more than three Working Days after the same has become due such interest to be paid from the date the sum becomes due
- 6.4 To notify the Council in writing of any sale of the Site and such notice shall include the date of the sale and the name and address of the person to whom the Site is sold and shall be given within 14 days of the completion of any such sale

6.5 To pay to the Council on completion of this Agreement the sum of [One thousand and thirty-seven pounds (£1037.00) in respect of the cost of the preparation and execution of this Agreement and duplicates thereof

7 **IN** consideration of these presents and of the covenants by the Owner the Council hereby covenants with the Owner as follows:-

- 7.1 That it will within seven days of the date of payment of its costs set out in Clause 6.4 issue the Permission
- 7.2 That it will use the money paid under the provisions of this Agreement for the purposes set out in this Agreement and for no other purpose
- 7.3 That in the event that the Sports Contribution has not been spent or committed to the purposes set out in this Agreement within five years from the date of payment then it will repay to the party who paid the same such part of the Sports Contribution as has not been spent or committed but without being liable for interest on any sums so repaid

8. **IT** is agreed between the parties to this Agreement as follows

- (i) No person shall be liable for any breach of the covenants restrictions or obligations contained in this Agreement which affect land in which he has no interest or which occur after he has parted with his interest in the said land or that part of the said land in respect of which a breach occurs
- (ii) The provisions of the Interpretation Act 1978 shall apply to the terms hereof as if this Agreement was an Act of Parliament
- (iii) This Deed shall be registered as a local land charge by the Council
- (iv) This Agreement shall cease to have effect if the Permission is quashed; revoked; withdrawn; expires prior to the Commencement of Development or otherwise becomes incapable of implementation in its entirety and in such event the Council shall remove the entry in the Local Land Charges Register relating to it
- (v) Any notice required to be served on any party to this Deed shall be deemed to have been properly served if delivered or sent by the recorded delivery service to the address of the party given in this Deed or to such other address as shall have been notified by that party in

writing to all other parties

- (vi) If any clause of this Deed shall be found to be invalid or unenforceable then such invalidity or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed
- (vii) Where any matter is required to be agreed by any party then such agreement shall not be unreasonably withheld or delayed
- (viii) The planning obligations contained in this Deed shall not be enforceable against the owner-occupiers or tenants of any dwelling constructed pursuant to the Permission
- (ix) Following the performance and satisfaction of all obligations contained in this Deed the Council shall effect the cancellation of the entry in the Local Land Charges Register relating to it
- (x) No waiver whether express or implied by the Council in respect of any breach or default in performing any of the obligations in this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the remaining obligations or from acting upon any subsequent breach or default

9. IN the event of any dispute disagreement or difference hereunder and the parties hereto having been unable to resolve the same within four weeks either party shall be entitled to refer the matter in dispute to expert determination by an expert of not less than ten years' standing in the field of the matter in dispute and being a member of the Royal Institution of Chartered Surveyors or if appropriate to the matter in dispute another professional institution or body the identify of such person in default of agreement being an appointment made by the President of the Royal Institution of Chartered Surveyors who shall determine the matter in such manner as he shall direct in giving notice of his appointment the terms of appointment including that he make reasonable endeavours to determine the matter in dispute and issue his determination in writing giving full reasons therefor within ten weeks of his appointment and his costs shall be paid by the parties as directed AND the parties shall comply with his directions and determination save for matters of law and any manifest error.

10. THE Mortgagee acknowledges and declares that this Obligation has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of the charge over the Site shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

11. THE Sports Contribution shall be increased by the amount which bears the same proportion thereto as the amount by which the All Items Index of Retail Prices published by the Office for National Statistics or any successor body for the month immediately preceding the date of payment exceeds the index figure of the said Index at the date of this Deed.

12. THIS Deed is governed by and interpreted in accordance with the law of England and Wales

IN WITNESS WHEREOF the parties hereto have duly executed this Deed the day and year first before written

SCHEDULE 1

Description of the Site

EXECUTED AS A DEED by affixing)
the Common Seal of **THE ROCHDALE**)
BOROUGH COUNCIL in the presence of:)

Authorised Signatory

EXECUTED AS A DEED by the said)
XXXXX)
in the presence of)

EXECUTED AS A DEED by affixing the
Common Seal of **Recedham Developments Limited**
Director

in the presence of: _____)